

### **Remarks**

All of the prior art rejections in the present Office Action rely on the teachings of US Patent No. 5,955,417 to Taylor – either as anticipating the pending claims or rendering the claims obvious in combination with a secondary reference. Applicants respectfully submit that the Office Action has misinterpreted the teachings of Taylor – specifically, the nature of the solid waxy cleansing composition taught by Taylor, which is different from the pourable soap used in the present invention, as well as the process for preparing a cleansing pad comprising a pourable soap according to the present invention. For the reasons set forth below and in the accompanying 1.132 Affidavits of Michael Popovsky and Stephen Herman, Applicants respectfully traverse the rejections and request reconsideration and allowance.

**A. The '417 Patent Makes Nothing More than a Passing Reference to the Possibility of Including a Fatty Acid Based Soap in a Surfactant Dispersion That Can Be Infused in A Cleansing Pad After Forced Drying**

The foundation of the prior art rejection based on the '417 Patent is that when read expansively the '417 Patent teaches a pad (defined as a “three dimensional lofty non-woven web made out of a plurality of polyester fibers”) impregnated with a solid waxy cleansing composition, where the composition is present in the voids within the web in dry form. See Abstract. The rejection is based on the further teaching in the Abstract that the disclosed

cleansing system, while preferably a surfactant blend containing two types of surfactants (nonionic and anionic), a hydrotrope, alkali agent and a suitable solvent, may also be "a fatty acid based soap." Id. The only further discussion of a "fatty acid based soap" in the '417 Patent is at Col. 4, lines 42 – 4: "Alternatively, the cleaning composition may comprise fatty acid based soaps such as tallow fatty acid, coconut fatty acid, or a mixture of both."

Applicants respectfully submit that when the broad teachings discussed in the preceding paragraph are read in context of the invention as a whole that is being described and claimed by Taylor, these teachings are nothing more than general guidance; they provide no indication of parameters or direction to a person having ordinary skill in the art that would provide a reasonable expectation of successfully using a fatty acid based soap to form a waxy solid cleansing composition that can be impregnated into a cleaning pad generally, or, more particularly, a cleansing pad infused with pourable soap that can be used for at least 20 showers or baths (as recited in new claim 65) and/or a cleansing pad infused with a fragranced pourable soap.

In marked contrast, the '417 patent describes in great detail a synthetic detergent system comprised of, among other ingredients, specific non-ionic surfactants (including the two claimed non-ionic surfactants, coconut monoethanolamide and stearic monoethanolamide) and anionic surfactants (including the claimed anionic surfactant, sodium dodecylbenzene sulfonate). The surfactant ingredients are more particularly taught to be present within

specified weight percentage ranges. No such guidance is given with respect to fatty acid based soaps.

**1. The Waxy Solid Cleansing Composition Taught by the '417 Patent Requires A Drying Step That Would Render the Invention of the Present Invention Inoperable**

The '417 Patent teaches a waxy solid cleansing composition comprised not only of a blend of specific surfactants but also of "a suitable solvent." See '417 Patent at Col. 2, line 50. The solvent is disclosed as being selected from the group of water, alcohols and glycols. See, '417 Patent at Col. 2, line 67 – Col. 3, line 1. The preferred surfactant blend according to the '417 Patent contains water as the solvent. See, '417 Patent at Col. 3, line 2. In order to achieve this waxy solid composition, the solvent must be dried off.

That a drying step is an integral part of the invention disclosed in the '417 Patent is made clear at Col. 7, lines 53 – 55 which teaches that "after [the] web ... is impregnated with the liquid blend it is conveyed by transfer mechanism ... to [a] drier." Indeed, beginning at Col. 7, line 52 and continuing through Col. 8, line 25, the '417 Patent contains an extensive discussion of a forced drying step. With respect to the surfactant based cleansing composition that is the subject of the '417 Patent (as opposed to fatty acid based soap cleansing compositions which, as discussed above, are mentioned only in passing without any direction), Col. 4, lines 6 – 8 clearly teaches that "the end product of a liquid surfactant [blend] is uniformly dispersed in the web and dried."

In contrast, the cleansing article of the present invention does not involve a forced drying step. Claims specifically directed to a method of manufacturing a cleansing device comprising a pourable soap that is in essentially solid form below 120°F and in molten form about 120°F to about 160°F will be prosecuted in a divisional application. For purposes of the examination of the pending claims, particularly those relating to a cleansing pad comprised of a pourable soap and a fragrance, Applicants respectfully submit that the drying step taught by the '417 Patent teaches away from the present invention. In this regard, Applicants respectfully note that the prior art must be considered in its entirety, including disclosures that teach away from the claim. See MPEP § 2145 X.D.

At Col. 7, lines 57 – 60, the '417 Patent teaches that the liquid blend is heated to a first temperature equal to the boiling point of the solvent (212°F for water) or greater, preferably about 280°F. As discussed above, the '417 Patent teaches, but does not specify, two classes of solvents in addition to water – alcohols and glycols. The boiling point (BP) at atmospheric pressure (14.7 psia) of common alcohols and glycols are listed in the following table:

<u>Solvent</u>	<u>BP (°F)</u>
Alcohol – ethyl	172.4
Alcohol – propyl	207
Alcohol – butyl-n	243
Ethylene Glycol	386
Propylene Glycol	368

With respect to water, which is taught to be the preferred solvent (see, e.g., '417 Patent, Col. 3, lines 1 – 3), the '417 Patent teaches heating a liquid cleanser blend to a temperature of greater than the boiling point of water, preferably to about 280°F. Heating changes the characteristics of a liquid blend into a waxy solid cleansing composition. In contrast, the solid cleansing agent pourable soap that constitutes an integral part of the cleansing pad of the present invention has a melting point of from about 120°F to about 160°F. When cooled below 120°F, the solid cleansing agent pourable soap reconstitutes in essentially the same form from liquid to solid. Accordingly, the solid cleansing agent pourable soap incorporated in the cleansing pad of the present invention does not undergo a change in composition as a result of a required drying step.

As set out in the Section 1.132 Affidavit of Michael Popovsky, heating the cleansing pourable soap used in the cleansing pads of the present invention to temperatures taught by the '417 Patent (e.g., in excess of 212°F) would have a significant detrimental effect on the performance and characteristics of the cleansing pad claimed in the present invention. Indeed, heating to the temperatures taught by the '417 Patent, would negatively impact product aesthetics, producing a product that is not commercially acceptable, and not one that has achieved accolades in the media and received prestigious awards.

**a. The Solid Waxy Cleansing Composition Taught by Taylor Does Not and Cannot Contain Fragrance**

As set out in the Section 1.132 Affidavit of Stephen Herman, a person having ordinary skill in the art would recognize that notes (the individual components of a fragrance) and accords (the combination of three or more individual notes that create a unified olfactory impression) are highly temperature sensitive. Starting temperatures of greater than about 170°F, notes will degrade and accords will change. Knowing this, a person having ordinary skill in the art would not use a process of the type taught by the '417 – namely, a process which heats a liquid blend to temperatures of over 212°F – to make a fragranced soap-infused sponge. Thus, the '417 teaches away from a pourable soap infused with fragrance.

As set out in the Section 1.132 Affidavit of Michael Popovsky, heating the solid cleansing agent pourable soap used in the present invention to temperatures greater than about 170°F resulted in changes in the fragrance of the cleansing pad.

Fragrance is a required claim element of currently amended claim 12 and new claim 64. The former claim recites a solid cleansing agent pourable soap comprised of one or more fragrances. Claim 64 recites a cleansing pad wherein the one or more fragrances comprises from about 0.5% to about 5% by weight of the solid cleansing agent pourable soap.

**b. The Solid Cleansing Agent Pourable Soap Used in the Cleansing Pad of the Present Invention Would Discolor at Temperatures of Greater than 200 °F**

In addition to the impact on fragrance (discussed immediately above), heating the solid cleansing agent pourable soap to temperatures above about 170°F would cause the pourable soap to change in color – rendering it cosmetically unappealing. See 1.132 Affidavit of Michael Popovsky at ¶ 5.

**B. The Ratio of Cleansing Composition to Pad in the Present Invention is Neither Taught Nor Suggested by Taylor**

At page 8, the Office Action takes the position that the loading level of cleansing composition claimed by Applicants can be achieved merely by optimization. Applicants respectfully traverse this rejection.

In order to optimize a result – here, the loading level of a cleansing composition – a particular parameter must first be recognized as a result-effective variable. MPEP § 2144.05 II.A. The '417 Patent does not identify such a variable. Instead the '417 Patent merely teaches that the pad includes from about 0.8 to about 2.0 grams of dry cleaning composition per gram of web material and, preferably, about one gram of cleaning composition per gram of web material.

Applicants respectfully submit that the high loading solid cleansing agent pourable soap to pad of greater than 10:1 meets a long-felt need for a single, multiple use cleansing pad that can be used 20 or more times.

Indeed, as set out in ¶7 of the Section 1.132 Affidavit of Michael Popovsky, certain commercial embodiments of Spongeables sponges – the tradename of cleansing pads of the present invention – can be used for 30 or more showers or baths. This property (i.e., 30 + uses) is attributable both to the melting point of the solid cleansing agent pourable soap and the process used to infuse the pourable soap into a sponge, a process that does not involve a heated drying step. Id.

**C. The Non-Obviousness of the Present Invention is Evidenced by the Commercial Success of Products Claimed in the Instant Application**

A further indicia of non-obviousness is commercial success – something which has been reported in the press about the Spongeables® product line – the commercial name of the cleansing pads claimed in the pending application. For example, Spongeables® products were featured in a story in the October 29, 2004 edition of Women's Wear Daily ("WWD"). According to that article, in its first year "Spongeables have already been successful at upscale merchants such as Henry Bendel, Nordstrom, Marshall Field's and Saks Fifth Avenue. Specialty chains including Pure Beauty and Beauty First also picked up the sponges." Six months later, the February 11, 2005 issue of WWD reported that Spongeables® soap-infused sponges were a "hit" at the ECRM bath fragrance and cosmetics tradeshow. Continued commercial success of Spongeables® products is reflected in the May 2006 report by Euromonitor International entitled Cosmetics and Toiletries in the US: "Originally released in upscale merchants like Saks Fifth Avenue, Marshall



Field's, Nordstrom, and Henri Bendel, Spongeables has enjoyed enormous success since its introduction ..."

In addition, Spongeables' "Shower Gel in a Sponge" received the iParenting Media Award, a consumer award certified by ISO 9001:2000.

The Spongeables® consumer base expanded into mass merchandisers including chain drugs stores. At the 2004 National Association of Chain Drug Stores Marketplace, the category manager for soaps at Snyder's Drug, a chain of over 60 drug stores in the Midwest, called Spongeables® "one of the most unique products [at the show]". Among the features that she noted in an interview with WWD were the scents in which Spongeables® were available. Thus, the commercial success of the claimed cleansing pads comprised of pourable soap relates, in part, to fragrance – a claimed element.

**D. There is No Teaching, Suggestion or Motivation to Combine Taylor with Reuven or the Other Secondary References**

Regarding the obviousness rejection of claim 12 based on the combined teachings of US Patent No. 5,960,506 to Reuven and the '417 Patent, Applicants respectfully submit that it is improper to combine references where one of the references teaches away from their combination. See MPEP 2145 X.D.2.

For the same reason (i.e., heating step of '417 Patent teaches away from invention claimed in present invention), Applicants respectfully request withdrawal of the obviousness rejections based on the combined teachings of the '417 Patent with the remaining secondary references of record.

**E. Claims 6, 59-62 Meet the Requirements of Section 112, ¶2**

With respect to claim 6, the Office Action queries "how one would get the solid cleansing [agent] pourable soap into the non-porous substrate." As explained in the '417 Patent, the cleansing composition can be dispersed in the voids within the web. See '417 Patent at Col. 2, lines 45-46.

Claims 62 and 63 have been amended to recite a solid cleansing agent pourable soap that is "essentially free of" and "free of" of synthetic detergents. Applicants respectfully submit that the use of negative limitations is neither ambiguous nor uncertain and that the "essentially free of" and "free of" limitations allow the scope of these claims to be clearly determined vis-à-vis claims 59 and 60. See MPEP § 2173.05(i) (citing In re Wakefield, 422 F.2d 897, 899, (CCPA 1970)).

For the above reasons, Applicants respectfully request that rejections under the Section 112, ¶2 be withdrawn.

**Conclusion**

For the above reasons, reconsideration and withdrawal of the rejections are respectfully requested. If the Examiner believes that an interview will expedite review, please contact undersigned counsel.

Dated: May 15, 2008

Respectfully submitted,  
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